

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
PATRICIA CREEGAN-LYNCH,

Plaintiff,

v.

TOWN SPORTS INTERNATIONAL, LLC,

Defendant.
-----X

Civil Action No. _____

FILED
JUL - 3 2007

USDC WP SDNY

NOTICE OF REMOVAL

07 CIV. 6190

JUDGE CROTTY

Defendant-Petitioner, TOWN SPORTS INTERNATIONAL, LLC, files this notice to remove the foregoing case to the United States District Court for the Southern District of New York, and respectfully shows this Court:

1. TOWN SPORTS INTERNATIONAL, LLC, is the defendant in the civil action brought on or about May 2, 2007, in the Supreme Court of the State of New York, New York County. Pursuant to the provisions of 28 U.S.C. § 1441 and 28 U.S.C. § 1446, TOWN SPORTS INTERNATIONAL, LLC removes this action to the United States District Court for the Southern District of New York, which is the judicial district in which the action is pending.

2. This is a civil action sounding in negligence seeking damages to recover for the alleged personal injuries of plaintiff PATRICIA CREEGAN-LYNCH as a result of a slip and/or trip and fall event at a fitness club located at 30 Wall Street, New York, New York on July 8, 2006. Pursuant to the plaintiff's CPLR 3107(c) supplemental demand for relief, the amount in controversy in this suit is in excess, exclusive of interests and costs, of \$75,000.

3. The parties to this action have complete diversity of citizenship in that: (a) plaintiff PATRICIA CREEGAN-LYNCH is now, and was at the time said action was commenced, a resident and domiciliary of the State of Massachusetts; and (b) defendant TOWN SPORTS INTERNATIONAL, LLC was at the time said action was commenced, organized in

and by the State of New York with its principal place of business in the City and State of New York.

4. This action was commenced against the defendant on or about May 2, 2007. Defendant-petitioner was served with the Summons and Verified Complaint via New York Secretary of State pursuant to Limited Liability Company Law § 303 on June 4, 2007. Since no amount of damages was specified in the complaint in order to intelligently ascertain removability, the defendant-petitioner served a CPLR § 3017 demand upon the plaintiff on June 25, 2007.

5. The plaintiff responded with a Supplemental Demand for Relief dated June 27, 2007 demanding \$1,000,000 to resolve this controversy.

6. No proceedings have occurred in the state court action. The Summons and Complaint, Defendant's Demand Pursuant to CPLR § 31017(c) and Plaintiff's Supplemental Demand for Relief annexed hereto collectively as **Exhibit "A"** constitute all the process, pleadings and paper concerning this action to date.

7. This action is one in which the District Courts of the United States have original jurisdiction under 28 U.S.C. § 1332 and 28 U.S.C. § 1441. There is complete diversity of citizenship between the plaintiffs and defendants and the amount in controversy exceeds \$75,000.

8. This application is filed within thirty (30) days of receipt by defendant-petitioner of the Plaintiff's Supplemental Demand for Relief. Pursuant to the authority of *Cazaubon v. Korean Airlines Co.*, 2007 U.S. Dist. LEXIS 40080 (EDNY 2007); *DeMarco v. MGM Transp.*, 2006 U.S. Dist. LEXIS 10121 (SDNY 2006) and *Setlock v. Renwick*, 2004 WL 1574663 (WDNY 2004), the Plaintiff's Supplemental Demand for Relief pursuant to CPLR § 3017(c)

constitutes the "other paper" that 28 U.S.C. § 1446(b) recognizes as an alternative starting time for the 30-day removal period. Accordingly, this petitioner is timely brought.

9. Pursuant to 28 U.S.C. § 1446(d), written notice of the filing of this Notice of Removal will be given to counsel for all adverse parties and a copy of this Notice of Removal will be filed with the Clerk of the Supreme Court of New York, New York County.

Dated: White Plains, New York
June 29, 2007

Respectfully submitted,

WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP

By: 

Rory L. Lubin, Esq. (RL - 1340)

Attorneys for Defendant

TOWN SPORTS INTERNATIONAL, LLC

3 Gannett Drive

White Plains, New York 10604

(914) 323-7000

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

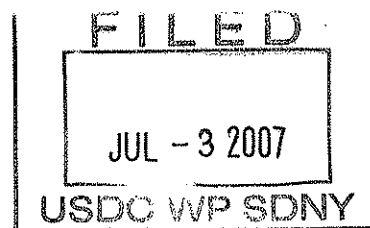
-----X
PATRICIA CREEGAN-LYNCH,

Plaintiff,

v.

TOWN SPORTS INTERNATIONAL, LLC,

Defendant.
-----X



Civil Action No.:

RULE 7.1(a) STATEMENT

07 CIV. 6190

JUDGE CROTTY

Defendant, as and for its Rule 7.1(a) statement of interested parties respectfully shows to
this Court the following:

1. Parent corporation: Town Sports International Holdings, Inc.
2. Publicly held corporations
owning more than 10%
of the defendant's stock/shares: None.

Dated: June 29, 2007
White Plains, New York

Yours, etc.,

WILSON, ELSER, MOSKOWITZ, EDELMAN
& DICKER LLP

By: 

Rory L. Lubin, Esq. (RL 1340)

Attorneys for Defendant

3 Gannett Drive
White Plains, New York 10604
(914) 323-7000
Our File No.: 08342.00175

Exhibit A

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
PATRICIA CREEGAN-LYNCH,

Plaintiff,

-against-

TOWN SPORTS INTERNATIONAL, LLC,

Defendant.
-----X

Index No. 100434/07

Plaintiff Designates New York
County as the Place of Trial

The Basis of the Venue is
Defendant's Place of Business

SUMMONS


Plaintiff Resides At:
161 Newbury Street
Peabody, Massachusetts 01960

To the above named Defendant:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded herein.

Dated: May 2, 2007

Defendant's address: 30 Wall Street
New York, New York 10005


GREGORY W. BAGEN
Attorney for Plaintiff
PATRICIA CREEGAN-LYNCH
317 Clock Tower Commons Drive
P.O. Box 380
Brewster, New York 10509
(845) 279-7000

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

-----X
PATRICIA CREEGAN-LYNCH,

Plaintiff,

Index No. 106434/07

-against-

VERIFIED COMPLAINT

TOWN SPORTS INTERNATIONAL, LLC,

Defendant.
-----X

The plaintiff, **PATRICIA CREEGAN-LYNCH**, by and through her attorney, **GREGORY W. BAGEN**, for her Verified Complaint, respectfully alleges and shows as follows:

1. Plaintiff was at all times hereinafter mentioned, a resident of the Commonwealth of Massachusetts.

2. Upon information and belief, defendant **TOWN SPORTS INTERNATIONAL, LLC**, is a limited liability corporation doing business in the County and State of New York.

3. Upon information and belief, at all times hereinafter mentioned, the defendant **TOWN SPORTS INTERNATIONAL, LLC** was and still is the owner of certain lands, buildings and premises located on 30 Wall Street, in the City, County and State of New York.

4. The aforesaid real property consists of land and commercial buildings erected thereon which are controlled, possessed and maintained by the defendant **TOWN SPORTS INTERNATIONAL, LLC**.

5. Defendant, **TOWN SPORTS INTERNATIONAL, LLC**, at all times herein had exclusive control of the buildings at the aforementioned site.

6. Upon information and belief, at all times hereinafter mentioned, it was the duty of the defendant, **TOWN SPORTS INTERNATIONAL, LLC**, to maintain in a safe and proper manner and in a safe and proper condition, the buildings on its premises.

7. On and prior to July 8, 2006, the defendant disregarded its duty, negligently and carelessly permitted a building to be improperly and dangerously maintained and to be and remain in an unsafe and dangerous condition in that it had uneven stairs, was unlighted and unguarded, had been so for an extended period of time and no warnings were posted of the hazards.

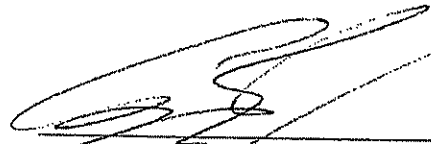
8. On or about July 8, 2006, at approximately 8:50 a.m. on that date, while plaintiff, **PATRICIA CREEGAN-LYNCH**, was lawfully on the defendant's premises, as a guest and solely owing to defendant's negligence in not keeping the building in a safe and proper condition, plaintiff, **PATRICIA CREEGAN-LYNCH**, was caused to be violently injured sustaining injuries and damages hereinafter alleged.

D 9. As a result of the fault previously alleged, the plaintiff, **PATRICIA CREEGAN-LYNCH**, was rendered sick, sore and disabled, kept from her normal occupation and avocations, suffered grievous injury to her arm and shoulder, with resulting pain and suffering and discomfort.

D 10. By reason of the foregoing, the plaintiff has been damaged in a sum in excess of the jurisdiction of all lower courts.

WHEREFORE, plaintiff demands judgment against the defendant in an amount to be determined by the trier of fact, together with the costs and disbursements of this action.

Dated: Brewster, New York
May 2, 2007


GREGORY W. BAGEN
Attorney for Plaintiff
PATRICIA CREEGAN-LYNCH
317 Clock Tower Commons Drive
P.O. Box 380
Brewster, New York 10509
(845) 279-7000

Index No. 106434

Year 2007

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF PUTNAM

PATRICIA CREEGAN-LYNCH,

Plaintiff,

-against-

TOWN SPORTS INTERNATIONAL, LLC,

Defendant.

SUMMONS
& VERIFIED
COMPLAINT

Attorney for

GREGORY W. BAGEN
Plaintiff
PATRICIA CREEGAN-LYNCH
317 CLOCK TOWER COMMONS
POST OFFICE BOX 380
BREWSTER, NEW YORK 10509-0380
(845) 279-7000
FAX (845) 279-4900

Pursuant to 22 NYCRR 130-1.1, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information and belief and reasonable inquiry, the contentions contained in the annexed document are not frivolous.

Dated:

Signature.....

Print Signer's Name.....

Service of a copy of the within

is hereby admitted.

Dated:

Attorney(s) for

PLEASE TAKE NOTICE

Check Applicable Box

☐
NOTICE OF
ENTRY

that the within is a (certified) true copy of a
entered in the office of the clerk of the within named Court on

20

☐
NOTICE OF
SETTLEMENT

that an Order of which the within is a true copy will be presented for settlement to the
Hon. one of the judges of the within named Court,
at
on

20

, at

M.

Dated:

Attorney for

GREGORY W. BAGEN

To:

317 CLOCK TOWER COMMONS
POST OFFICE BOX 380
BREWSTER, NEW YORK 10509-0380

Attorney(s) for

SERVICO 35

200706050 044

200706050 043

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----- x Index No.: 106434/07
PATRICIA CREEGAN-LYNCH :

Plaintiff, : **DEMAND PURSUANT TO**
: **CPLR 3107(c)**

-against- :

TOWN SPORTS INTERNATIONAL, LLC, :

Defendant. :

----- x

COUNSELORS:

PLEASE TAKE NOTICE that, pursuant to CPLR § 3017(c), defendant TOWN SPORTS INTERNATIONAL, LLC, by its attorneys WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP, hereby requests that, within fifteen (15) days hereof, that the plaintiff serve a supplemental demand for relief setting forth the total damages to which she deems herself entitled.

Dated: White Plains, New York
June 25, 2007

Yours, etc.,

WILSON, ELSER, MOSKOWITZ, EDELMAN
& DICKER LLP

Attorneys for Defendant

3 Gannett Drive

White Plains, New York 10604

(914) 323-7000

Our File No.: 08342.00175

By:


Rory L. Lubin

TO: GREGORY BAGEN, ESQ.
Attorney for Plaintiff
317 Clock Tower Commons Drive
P.O. Box 380
Brewster, New York 10509
(845) 279-7000

AFFIDAVIT OF SERVICE


STATE OF NEW YORK)
) ss:
COUNTY OF WESTCHESTER)

LAURIE PAYER, being duly sworn, deposes and says:

That I am not a party to this action, am over eighteen years of age and reside in the State of New York.

That on the ^{25th} day of June, 2007 deponent served the within **DEMAND PURSUANT TO CPLR 3107(c)** by depositing a true copy of same enclosed in a post paid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Post Office Department within the State of New York, addressed to each of the following persons at the last known address set forth after each name, as follows:

TO: GREGORY BAGEN, ESQ.
Attorney for Plaintiff
317 Clock Tower Commons Drive
P.O. Box 380
Brewster, New York 10509
(845) 279-7000


LAURIE PAYER

Sworn to before me this
^{25th} day of June, 2007


Notary Public

RORY L. LUBIN
Notary Public, State of New York
No. 02LU5057942
Qualified in Westchester County
Commission Expires April 1, 2010

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

-----X
PATRICIA CREEGAN-LYNCH,

Plaintiff,

Index No.: 106434/2007

- against -

TOWN SPORTS INTERNATIONAL, LLC

**SUPPLEMENTAL
DEMAND FOR RELIEF**

Defendant.
-----X

PATRICIA CREEGAN-LYNCH, by her attorneys **GREGORY W. BAGEN**, hereby
demands \$1,000,000.00 (dollars) in settlement of this action.

Dated : Brewster, New York
June 27, 2007

By: 

GREGORY W. BAGEN

Attorney for Plaintiff,

PATRICIA CREEGAN-LYNCH

317 Clock Tower Commons

P.O. Box 380

Brewster, New York 10509

(845)279-7000

**TO: WILSON, ELSER, MOSKOWITZ
EDELMAN & DICKER, LLP
3 Gannett Drive
White Plains, New York 10604
(914) 323-7000**

The reason I make this affirmation instead of _____ is _____

I affirm that the foregoing statements are true under penalties of perjury.
I am _____

(Print signer's name below signature)

STATE OF NEW YORK, COUNTY OF _____

ss:

being sworn says: I am _____

☐ I, _____, in the action herein, I have read the annexed
know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on
information and belief, and as to those matters I believe them to be true.
the _____ of _____
☐ a corporation, one of the parties to the action; I have read the annexed
know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on
information and belief, and as to those matters I believe them to be true.
belief, as to those matters therein not stated upon knowledge, is based upon the following:

Sworn to before me on _____, 20 _____

(Print signer's name below signature)

STATE OF NEW YORK, COUNTY OF NEW YORK

ss:

being sworn says: I am not a party to the action, am over 18 years of

Jennifer Beaird
and reside at _____

On **June 27,** 20 **07** I served a true copy of the annexed **Supplemental Demand For Relief**
in the following manner:

☒ by mailing the same in a sealed envelope, with postage prepaid thereon, in a post-office or official depository of the U.S. Postal Service
within the State of New York, addressed to the last-known address of the addressee(s) as indicated below;
☐ by delivering the same personally to the persons at the address indicated below;
☐ by transmitting the same to the attorney by electronic means to the telephone number or other station or other limitation designated by the
attorney for that purpose. In doing so I received a signal from the equipment of the attorney indicating that the transmission was received,
and mailed a copy of same to that attorney, in a sealed envelope, with postage prepaid thereon, in a post office or official depository of the
U.S. Postal Service within the State of New York, addressed to the last-known address of the addressee(s) as indicated below;
☐ by depositing the same with an overnight delivery service in a wrapper properly addressed. Said delivery was made prior to the latest time
designated by the overnight delivery service for overnight delivery. The address and delivery service are indicated below:

To: **Wilson, Elser, Moskowitz**
Edelman & Dicker, LLP
3 Gannett Drive
White Plains, New York 10604

Sworn to before me on **June 27,** 20 **07**

GREGORY W. BAGEN
Notary Public, State of New York
Notary #1128
Qualified in Putnam County
Commission Expires **October 31, 2009**

Jennifer Beaird
(Print signer's name below signature)

AFFIDAVIT OF SERVICE

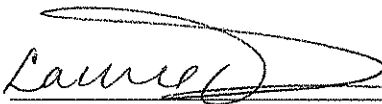
STATE OF NEW YORK)
) ss:
COUNTY OF WESTCHESTER)

LAURIE PAYER, being duly sworn, deposes and says:

That I am not a party to this action, am over eighteen years of age and reside in the State of New York.

That on the 3rd day of July, 2007 deponent served the within **CIVIL COVER SHEET, NOTICE OF REMOVAL and RULE 7.1 (a) STATEMENT** by depositing a true copy of same enclosed in a post paid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Post Office Department within the State of New York, addressed to each of the following persons at the last known address set forth after each name, as follows:

TO: GREGORY BAGEN, ESQ.
Attorney for Plaintiff
317 Clock Tower Commons Drive
P.O. Box 380
Brewster, New York 10509
(845) 279-7000


LAURIE PAYER

Sworn to before me this
3rd day of July, 2007


Notary Public

RORY L. LUBIN
Notary Public, State of New York
No. 02LU5057942
Qualified in Westchester County
Commission Expires April 1, 2010

AFFIDAVIT OF SERVICE

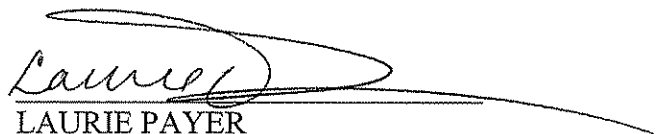
STATE OF NEW YORK)
) ss:
COUNTY OF WESTCHESTER)

LAURIE PAYER, being duly sworn, deposes and says:

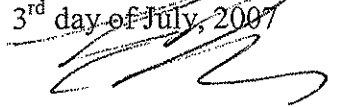
That I am not a party to this action, am over eighteen years of age and reside in the State of New York.

That on the 3rd day of July, 2007 deponent served the within **CIVIL COVER SHEET, NOTICE OF REMOVAL and RULE 7.1 (a) STATEMENT** by depositing a true copy of same enclosed in a post paid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Post Office Department within the State of New York, addressed to each of the following persons at the last known address set forth after each name, as follows:

TO: GREGORY BAGEN, ESQ.
Attorney for Plaintiff
317 Clock Tower Commons Drive
P.O. Box 380
Brewster, New York 10509
(845) 279-7000


LAURIE PAYER

Sworn to before me this
3rd day of July, 2007


Notary Public

RORY L. LUBIN
Notary Public, State of New York
No. 02LU5057942
Qualified in Westchester County
Commission Expires April 1, 2010